No. 91-368

In The

Supreme Court of the United States

October Term, 1991

IN THE MATTER OF THE ESTATE OF LAURENCE T. BROWN, a Minor.

SHARON M. BROWN,

Petitioner,

vs.

GENE BROWN and GLENDA BROWN,

Respondents.

Petition For Writ Of Certiorari To The Appellate Court Of The State Of Illinois, Fourth Judicial District

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Is the Illinois statute under which petitioner's child was placed in the custody of respondents (petitioner's father and stepmother), *Ill. Rev. Stat.* (1985), Chapter 110½, Para. 11-7, unconstitutional? Specifically:

   A. Does the statute on its face violate due process or equal protection if it authorizes a court to award custody of a fit parent's child to non-parents based upon the child's best interests, but only in instances where both parents are alive and not living together?

   B. Does the statute, as it was construed and applied by the Illinois Appellate Court, unconstitutionally deprive petitioner of a protected liberty interest in having the custody and care of her child in the absence of a finding of parental unfitness and a substantial State interest?

2. Did the Illinois Appellate Court improperly base its affirmance upon a certain reading of the statute in order to avoid adjudicating federal constitutional issues raised by petitioner, contrary to this court's decision in *NAACP v. Alabama?*

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PRAYER

Respondents, Gene Brown and Glenda Brown, ask this Court to deny the Petition for Writ of Certiorari to review the judgment and order of the Appellate Court of Illinois, Fourth Judicial District, entered December 31, 1990, as petitioner does not raise any issue deserving of review.

STATEMENT OF THE CASE

A) Nature of Trial Court Proceedings

The key person in this case has been Laurence T. Brown, a minor ("Larry"). Petitioner is Larry's mother. Respondent Gene Brown is Larry's maternal grandfather and Respondent Glenda Brown is his maternal "step-grandmother".

On July 30, 1986, respondents filed for guardianship of Larry in the Circuit Court for Macon County, Illinois, pursuant to *Ill. Rev. Stat.* (1985), Ch. 110½, Paras. 11-1 to 11-13. Petitioner was given notice as required by statute and counsel entered an appearance on her behalf. On May 27, 1987, the guardianship petition was amended to allege that even if petitioner was a fit parent, it would be in Larry's best interests to establish guardianship in respondents.

After the case was commenced, the parties engaged in pre-trial discovery. A number of pre-trial motions were filed and ruled on. On September 14, 1987, and on nine days at various times thereafter, the evidentiary hearing on the amended petition was conducted. In addition, on two other days depositions of two witnesses were taken and the transcripts were admitted into evidence in lieu of in-court testimony. A brief summary of the evidence is set forth below.

B) Summary Of The Evidence

Petitioner was 32 years old and lived in Chicago, Illinois. Since graduating from high school, she lived with roommates at eight different places and had 19 different

jobs. Six of her roommates were lesbians and petitioner was a practicing lesbian living in an open and on-going lesbian relationship with her present roommate. Petitioner was an admitted alcoholic and a cocaine addict, but said she was recovering from those conditions.

Larry was born February 20, 1986, as a result of a rape. The father's identity was known, but he had no contact with Larry. Efforts by the court appointed *guardian ad litem* to locate the father were unsuccessful. During her pregnancy, petitioner regularly used cocaine and alcohol, knowing this could be detrimental to the fetus.

On March 2, 1986, at petitioner's request and with her consent, respondents took Larry to Decatur, Illinois, to live with them. Petitioner then entered a drug treatment program in Chicago, from which she was discharged March 28, 1986. She then lived with respondents and Larry in Decatur until April 20, 1986, at which time she left by herself to return to Chicago. Upon leaving, she did not provide respondents with any information as to how she could be reached in Chicago. Petitioner did not have any further contact with her son until June 1, 1986, when she saw him with respondents at a family wedding in Indiana. After the wedding, petitioner had little contact with her son until September, 1986, when, pursuant to an agreement formulated by the parties through their attorneys, petitioner began alternate weekend visitation with Larry at respondents' home and later at petitioner's mother's apartment in Decatur. Petitioner contributed no money to the support of Larry during these times, even though she claimed she could have sent $30.00 a week, because she was angry with her father.

On July 5, 1986, petitioner signed a notarized document in favor of respondents, granting them permission to care for Larry "as though he was their own". Thereafter, she wrote several letters to respondents in which she said that she couldn't afford to care for Larry and that she had been emotionally sick for a long time.

Since childhood, petitioner had been a "brittle diabetic", which had caused her to have numerous unpredicted insulin reactions. On a number of occasions since Larry's birth, petitioner had gone into diabetic comas. On one such occasion she was unconscious for five hours before being found by a policeman. The diabetes made it difficult for petitioner to awaken from her sleep. There were a number of instances at respondents' home when petitioner and Larry were sleeping in the same room and petitioner failed to wake up and attend to Larry when he would cry in the middle of the night.

Petitioner was employed at a graphics design firm in downtown Chicago. Her weekly take home pay was $251.43 and her monthly expense and debt payments totalled $1,282.00. Petitioner had no car and indicated that she and Larry would rely on public transportation if he came to live with her.

The apartment petitioner shared with her roommate had only one bedroom in use and petitioner and the roommate shared the bed. LaNell Hill, who performed a home study in connection with the case, was unaware of this and unaware that petitioner was a practicing lesbian. Nearly every night of the week, petitioner was involved in some type of substance abuse support group meeting.

Some of these meetings took place at petitioner's apartment on a regular basis. The other members of these support groups were also gay. Petitioner kept gay oriented literature and publications in open view in her apartment. Petitioner and her roommate kissed and held hands in public and did nothing to conceal the nature of their relationship. On several occasions while visiting with Larry at her mother's apartment, petitioner and her roommate slept together in the same room in which Larry was sleeping. Petitioner had sexual relations with her roommate on an on-going basis.

Respondents had been married eight years and had a good, loving relationship. Respondent Glenda Brown was 42, about to complete a M.S.W., and the executive director of a local senior citizens facility. Respondent Gene Brown was 61 and owned his own insurance agency. While married to petitioner's mother, respondent Gene Brown was unhappy about the marriage and did drink more at that time than at present. His present drinking pattern consisted of a couple of drinks in the evening at home.

Respondents' combined net monthly income was $2,477.00, against total monthly expenses of $2,004.00.

Respondents had integrated Larry into their household and took him with them nearly everywhere they went. At home, respondents would play with Larry, read to him, and engage in any number of other activities with him.

Dr. Radecki, a psychiatrist, had examined petitioner for about one hour in connection with the case. Prior to that he had never met petitioner. It was his opinion that petitioner would be able to provide a very good home for

Larry and would probably do a good to very good job of raising him. According to Dr. Radecki, social influences played a role in sexual orientation development and Larry was at the stage where he was forming his sexual identity. Dr. Radecki was unaware that petitioner had held 19 different jobs in 14 years, that she would frequently be rendered unconscious because of the diabetes, that she refused to support Larry out of the anger at her father, or that she returned to Chicago and remained *incommunicado* while Larry remained in Decatur with respondents. According to Dr. Radecki, lesbian relationships such as petitioner's were contrary to the sexual mores of present-day American society, although he felt that a large number of people would not find such relationships objectionable.

Dr. Campion, a licensed clinical psychologist, had observed Larry and respondents together on several occasions and had administered psychological tests to respondents. He had also read the transcript of petitioner's pretrial deposition. According to him, respondents' psychological profiles were unremarkable and each of them had appropriate abilities to care for and raise Larry. Dr. Campion's opinion was that petitioner was an unfit parent. He articulated a number of concerns with a proposed award of custody to petitioner, including: whether petitioner's substance abuse had really been overcome; certain adverse effects Larry was likely to experience as a result of his mother's sexual orientation and lifestyle; the lack of any real stability on the part of petitioner; and, petitioner's diabetic comas. However, the primary concern for Dr. Campion was the strong bonding that had

developed between Larry and respondents. Dr. Campion's professional opinion was that a breaking of this bonding would be very traumatic and difficult for Larry.

C) Outcome Of The Litigation

Against this factual backdrop, the trial court granted the petition for guardianship. In the order granting the petition, the trial court found that under the applicable state statute, petitioner's fitness as a parent was not an issue and therefore no finding regarding fitness was made. The trial court specifically found that Larry's best interests would be served by establishing guardianship in respondents, with a grant of visitation rights to petitioner. In addition, the trial court found the statute to be not unconstitutional.

The Illinois Appellate Court affirmed the order of the trial court, holding that: (1) The statute was not unconstitutional; (2) Petitioner had waived any issue regarding respondents' lack of standing under state law to bring the action; (3) Even if there had been no waiver, respondents possessed standing; and, (4) The trial court's order was not against the manifest weight of the evidence. *In the Matter of the Estate of Laurence T. Brown*, 207 Ill. App. 3d 139, 565 N.E. 2d 312, 152 Ill. Dec. 70 (4th Dist. 1990). Petitioner's petition for rehearing was denied, as was her petition for leave to appeal to the Illinois Supreme Court.

REASONS FOR DENYING THE WRIT

SUMMARY OF ARGUMENT

The issues raised by petitioner are not worthy of review by this Court. No special or important reasons exist for granting the writ. The judgment is not one of a state court of last resort, in spite of petitioner's unsupported assertion that for almost all Illinois litigants, the state intermediate court is the court of last resort. In any event, the decision of the Illinois Appellate Court in no way conflicts with the decision of another state court of last resort, of a United States Court of Appeals, or of this Court. The Illinois Appellate Court's decision may be supportable as a matter of state law not subject to this Court's review, even though issues of federal constitutional law were passed on.

The statute is not unconstitutional. On its face, the statute does not classify, let alone invalidly classify. A correct reading of the statute is that the "parents who live apart" referred to in the last sentence of the statute are the same "both parents of a minor who are living" and "fit parents" referred to in the last sentence of the statute. Furthermore, all Illinois decisional law, including that handed down by the Illinois Supreme Court, holds that under the statute in question, a parent need not be unfit or have forfeited custodial rights before guardianship or custody may be awarded to a non-parent. These same cases make no distinction between parents who are alive, dead, or living together or apart. In a successful non-parent action for custody there are only three requirements under state law: (1) The minor cannot be in the physical custody of a parent when the action is filed; (2)

good cause or compelling reasons must exist for not leaving custody with the parent; and, (3) The custody award to the non-parent must be in the child's best interest. Those three requirements satisfy the requirements of the Constitution of the United States. More might be required in a case of absolute termination of parental rights, but this is not such a case. Here, even though the trial court made no finding one way or another, petitioner was demonstrated to be unfit under state law and the evidence would have supported such a finding.

As construed and applied, the statute is not unconstitutional. The Illinois Appellate Court's construction is consistent with that of the Illinois Supreme Court. Petitioner received all of the process due her. She was afforded a full and fair evidentiary hearing. Substantively, she was not deprived of parental rights. Those rights remain intact, subject to guardianship rights vested in respondents. Even if a finding of unfitness were required to be made in the trial court, the evidence would have amply supported such finding. The State does have a substantial interest in this matter: To protect the emotional and psychological development of a child who has been voluntarily surrendered by the parent and to insure some continuity in that child's environment. The decision of the Illinois Appellate Court was not founded on petitioner's lesbianism, although the ongoing and open lesbian relationship was certainly a proper factor to consider. In fact, the opinion of the Illinois Appellate Court does not contain the words "lesbian" or "homosexual".

The Illinois Appellate Court's affirmance does not violate the principles set out in *NAACP v. Alabama*, 357

U.S. 49, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1964). The Illinois Appellate Court fully considered and disposed of petitioner's federal constitutional arguments. Even if a finding of unconstitutionality was avoided, this is in accord with the preferred method of judicial review and of statutory construction. Errors of a state court in interpreting and applying state law furnish no basis for a claim of denial of due process. Moreover, this Court is bound to accept a state court's construction and interpretation of its own laws, such as the state guardianship law in issue here.

ARGUMENT

1.A. ON ITS FACE, THE STATUTE DOES NOT VIOLATE DUE PROCESS OR EQUAL PROTECTION.

Preliminarily, respondents emphasize that the judgment of which review is sought is not one of Illinois' court of last resort. Even if it were, it does not conflict with the decision of another state court of last resort, the United States Court of Appeals, or this Court. The Illinois Appellate Court's decision is solely a matter of state law, construing and applying *Ill. Rev. Stat.* (1985), Ch. 110½, Para. 11-7. Even though the Illinois Appellate Court did pass on issues of federal constitutional law, its decision is supportable as a matter of state law not subject to this Court's review. *See, Maryland v. Baltimore Radio Show,* 338 U.S. 912, 70 S.Ct. 252, 94 L.Ed 562 (1950).

Petitioner advances a convoluted and strained reading of the statute in order to claim invalid classification. The statute talks about parents. In the first sentence, it

refers to "both parents of a minor who are living" and in the last sentence, it refers to "parents who live apart". According to petitioner, parents of the type referred to in the first sentence cannot experience custody being granted to a non-parent so long as the parents are "fit parents". However, since the "parents who live apart" referred to in the last sentence of the statute must, of necessity, be "both parents of a minor who are living", then they are a mere subclass of the group of living parents and are treated identically under the statute.

Moreover, petitioner's interpretation of the statute has not, as a matter of state law, been adopted by the Illinois courts. The cases of *People ex rel v. Livingston*, 42 Ill. 2d 201, 247 N.E. 2d 417 (Ill. 1969); *In Re Custody of Townsend*, 86 Ill. 2d 502, 427 N.E. 2d 1231, 56 Ill. Dec. 685 (Ill. 1981); and, *In Re Estate of Wittington*, 107 Ill. 2d 169, 483 N.E. 2d 210, 90 Ill. Dec. 892 (Ill. 1985) are all Illinois Supreme Court decisions under this particular statute containing explicit holdings that a parent need not be unfit or have forfeited custodial rights before custody may be awarded to a non-parent, if the best interests of the child would be served. No distinction is drawn between parents who are living together, living apart, dead, or alive. In fact, *Townsend* involved a set of parents who were both alive, but living apart, exactly as in this case. The Illinois Appellate Court has even applied the best interest standard in a case under the statute where a non-parent was claiming custody as against a set of parents living together. *See, Mosely v. Goldstone*, 89 Ill. App. 3d 360, 411 N.E. 2d 1145, 44 Ill. Dec. 779 (1st Dist. 1980).

The decisional law of the State of Illinois, as set forth above, does create a presumption that the natural parent

has a right to custody superior to the claim of a non-parent (the "superior rights doctrine"), but the presumption is not absolute and serves as only one factor in resolving the controlling question of the best interests of the child. *Townsend*, 427 N.E. 2d at 1231.

Even assuming for the sake of argument that the statute does make the classification claimed by petitioner, she is not aggrieved by its operation. Petitioner's invalid classification argument is premised upon the notion that the statute does not expressly require a finding of unfitness in a case of a parent living apart from the other parent. As more fully argued elsewhere, the evidence would fully support a finding of unfitness under state law. Respondents feel it is important to point out that the trial court did not specifically refuse to find petitioner unfit, but merely remarked in its order that her fitness was not an issue. It is plain that the trial court did not feel compelled to find on her fitness given the present state of Illinois decisional law. If petitioner was unfit, which both respondents and the Illinois Appellate Court think, then petitioner has sustained no constitutional or other damage by the failure of the trial court to make an express finding of unfitness.

There is an additional state statute which authorizes non-parent custody awards and under which respondents could have proceeded, *Ill. Rev. Stat.* (1985), Ch. 40, Para. 601(b)(2). That provision provides for commencement of a custody action by a non-parent, but only if the child is not in the physical custody of one of the parents. The Illinois Appellate Court has specifically found this provision, which is a part of the Illinois Marriage and Dissolution of Marriage Act, to satisfy the requirements of due

process and equal protection. *Montgomery v. Roduez*, 156 Ill. App. 3d 262, 509 N.E. 2d 499, 108 Ill. Dec. 803 (1st Dist. 1987). Under this alternate provision, and under *Montgomery*, so long as there is limited standing on the part of the non-parent, based upon the child not being in the physical custody of a parent, an award of custody to the non-parent on the basis of the best interests of the child is permitted regardless of the fitness of the parent. Since respondents could have proceeded under this state law, it is respondents who will be denied equal protection if the decision of the Illinois Appellate Court is disturbed. It was a fortuitous circumstance that respondents chose to proceed under the one state law, which is here under attack due to the inclusion therein of language concerning parents who are alive and parents who are living apart, as opposed to the alternate provision found in the state divorce laws and not containing the complained of language.

1.B. AS CONSTRUED AND APPLIED BY THE ILLINOIS APPELLATE COURT, THE STATUTE DOES NOT UNCONSTITUTIONALLY DEPRIVE PETITIONER OF A PROTECTED LIBERTY INTEREST IN HAVING THE CUSTODY AND CARE OF HER CHILD.

Respondents agree that family matters are entitled to substantial constitutional protection. However, the cases relied upon by petitioner are not applicable to this case. For example, *Stanley v. Illinois*, 405 U.S. 645, 31 L.Ed. 2d 551, 92 S.Ct. 1208 (1972) involved an absolute and permanent termination of parental rights. In this case, petitioner's parental rights were not terminated, as petitioner has a right to visit and a duty of support. Furthermore,

the Illinois Appellate Court found a specific right on the part of petitioner to in the future seek expanded visitation and a return of custody. *Brown*, 565 N.E. 2d at 316.

This Court has previously upheld a state statute permitting parental rights to be permanently terminated on a best interest, as opposed to an unfitness, standard. *Quilloin v. Walcott*, 434 U.S. 246, 98 S.Ct. 549, 54 L.Ed. 2d 511 (1978).

The Illinois Appellate Court in *Montgomery v. Roduez*, 156 Ill. App. 3d 262, 509 N.E. 2d 499, 108 Ill. Dec. 803 (1st Dist. 1987) has previously rejected the type of constitutional arguments petitioner now makes. There, the mother argued due process required a finding of unfitness before she could lose custody. The Illinois Appellate Court disagreed, stating that the mother was neither exposed to, nor did she suffer, total deprivation of her parental rights and that she received a full and fair hearing to determine what custodial arrangement would be in the child's best interest. *Montgomery*, 108 Ill. Dec. at 808. The "superior rights doctrine" and the presumption in a parent's favor arising out of that doctrine adequately protect petitioner's liberty interest. *See, Townsend*, 427 N.E. 2d at 1235.

In *Montgomery*, the Illinois Appellate Court also addressed the interest of the state in awarding custody of a minor to a non-parent in the absence of a finding of parental unfitness. The Illinois Appellate Court focused on the requirement under Illinois state law that a non-parent custody action may only be commenced when a child is not in a parent's physical custody and remarked that the decision to surrender a child to a non-parent

impacted emotionally and psychologically on the child; therefore, when a parent attempts to regain custody, the State has an obligation to protect the emotional development of the child and ensure continuity in the child's environment. *Montgomery,* 108 Ill. Dec. at 808-9. The Illinois Appellate Court, in *Mosely v. Goldstone,* 89 Ill. App. 3d 360, 411 N.E. 2d 1145, 44 Ill. Dec. 779 (1st Dist. 1980), held that the constitutionally protected parental right to custody must give way upon a showing that custody by the parent is seriously challenged as being detrimental to the welfare of the child. *Mosely,* 411 N.E. 2d, at 1151-2. These state court decisions are in accord with the decisions of this court. In *Kovacs v. Brewer,* 356 U.S. 604, 78 S.Ct. 963, 2 L.Ed. 2d 1008, 1014 (1958), this Court recognized that when the care and protection of minors within their borders falls to the States, the States must be free to do what is in the best interest of the child. More recently, in *Palmore v. Sadoti,* 466 U.S. 429, 433, 104 S.Ct. 1879, 80 L.Ed. 2d 421 (1984) this Court remarked that a state has a duty of the highest order to protect the interest of minor children and that the goal of granting custody based on best interests is indisputably a substantial governmental interest for equal protection purposes. Also, in *Smith v. Organization of Foster Families For Equality and Reform,* 431 U.S. 816, 844-5, 97 S.Ct. 2094, 54 L.Ed 2d 14 (1977) this Court acknowledged the importance of intimacy of daily associations and rejected characterization of a foster family as a "mere collection of unrelated individuals". There is a substantial state interest in preserving the integrity of the family unit which has been formed by respondents and Larry. The employment of the best interest of the

child standard is rationally related to the achievement of that end.

Even if the Constitution of the United States requires a finding of unfitness, there was ample evidence of it in this case. As a matter of state law, a parent is unfit if, among other things, he or she: is guilty of open and notorious adultery or fornication [*Ill. Rev. Stat.* (1985), Ch. 40, Para. 1(D)(j)]; is addicted to non-prescribed drugs for at least one year prior to the unfitness proceeding [*Ill. Rev. Stat.* (1985), Ch. 40, Para. 1(D)(k)]; fails to demonstrate a reasonable degree of interest, concern, or responsibility as to the welfare of a newborn child during the first 30 days after birth [*Ill. Rev. Stat.* (1985), Ch. 40, Para. 1(D)(m)]; fails to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare [*Ill. Rev. Stat.* (1985); Ch. 40, Para. 1(D)(b)]; or, abandons the child [*Ill. Rev. Stat.* (1985), Ch. 40, Para. 1(D)(a)]. The Illinois Appellate Court in this case noted petitioner's near abandonment of the child and her substance abuse, especially while pregnant with Larry and with full knowledge of its possible detrimental effect upon him. *Brown*, 565 N.E. 2d at 316-17.

Petitioner attempts to convince this Court that the result in this case was a product of lesbian prejudice. First, the words "lesbian" or "homosexual" were not once mentioned in the Illinois Appellate Court decision. Second, under state law, sexual orientation is one factor to be considered in a custody determination. *In Re Marriage of Williams*, 205 Ill. App. 3d 613, 563 N.E. 2d 1195, 151 Ill. Dec. 89 (3d Dist. 1990). This Court, in *Bowers v. Hardwick*, 478 U.S. 186, 106 S.Ct. 2841, 92 L.Ed. 2d 140 (1986) recognized that proscriptions against consensual sex between

persons of the same gender have ancient roots and that the law is constantly based upon notions of morality. *Bowers*, 92 L.Ed. 2d at 146-49. In his concurrence, former Chief Justice Burger wrote, "(C)ondemnation of (homosexual) practices is firmly rooted in Judeao-Christian moral and ethical standards". *Bowers*, 92 L.Ed. 2d at 149 (concurring opinion).

2. THE ILLINOIS APPELLATE COURT'S AFFIRMANCE WAS NOT IMPROPERLY BASED UPON A CERTAIN READING OF THE STATUTE IN ORDER TO AVOID ADJUDICATING FEDERAL CONSTITUTIONAL ISSUES.

This Court's decision in *NAACP v. Alabama*, 357 U.S. 49, 78 S.Ct. 1163, 2 L.Ed. 2d 1488 (1964) does not stand for the proposition claimed by petitioner. In fact, that case actually stands for the proposition that even the United States Supreme Court will avoid decision of constitutional issues by deciding a case on non-constitutional grounds. Admittedly, in that case, this Court articulated its duty to ascertain whether the asserted non-federal grounds independently and adequately support the judgment. *NAACP v. Alabama*, 357 U.S. at 455. Unlike the state court in *NAACP v. Alabama*, the Illinois Appellate Court here did address and dispose of petitioner's federal constitutional arguments, albeit in a manner unfavorable to petitioner. Specifically, petitioner complains of the Illinois Appellate Court's statement that a rebuttal of the presumption that a parent has a superior right to custody is the legal equivalent of a demonstration that a parent is not "fit" and under the statute as so construed, *all* parents must be shown to be not fit.

Petitioner overlooks several important decisions of this Court in making this complaint. In *Howard v. Kentucky*, 200 U.S. 164, 172-3, 26 S.Ct. 189, 50 L.Ed. 421 (1906) this Court held that errors of the state court in interpreting and applying state law furnish no basis for a denial of due process claim. In the same case, this Court announced that it was bound to accept the state court's interpretation and application of the state law as a correct exposition of the law of the state – common, statutory, and constitutional. *Howard*, 200 U.S. at 173. This Court has also held that a decision by a state court amounting merely to erroneous construction of a state statute is not a denial of due process so as to be reviewable. *Neblett v. Carpenter*, 305 U.S. 297, 302, 59 S.Ct. 170, 83 L.Ed. 182 (1938).

This is not to say that the Illinois Appellate Court erroneously interpreted or applied the statute. In *Ullman v. United States*, 350 U.S. 422, 76 S.Ct. 497, 100 L.Ed. 511, reh den 351 U.S. 928, 76 S.Ct. 777, 100 L.Ed. 1457 (1956), this Court indicated that when the validity of a statute is drawn in question, and even if there are serious doubts as to constitutionality, the proper function of the Court is to ascertain whether a construction of the statute is fairly possible by which the constitutional question may be avoided. If the Illinois Appellate Court is guilty of anything, it is following the long-standing guidelines of this Court for adjudication of constitutional questions.

CONCLUSION

WHEREFORE, Respondents, Gene Brown and Glenda Brown, ask this Court to deny the petition for writ of certiorari in this cause.

Respectfully submitted,

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